

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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LAWRENCE R. SLAUGHTER,

Case No. 2:15-cv-00392-GMN-PAL

Plaintiff,

V.

CAROLYN W. COLVIN, Acting Commissioner
of Social Security,

Defendant.

SCREENING ORDER

This matter is before the Court on Plaintiff Lawrence R. Slaughter's Amended Complaint (Dkt. #5). This proceeding is referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rules IB 1-4 and 1-9.

I. RE-SCREENING THE AMENDED COMPLAINT

After granting a litigant’s request to proceed *in forma pauperis*, a district court must screen the complaint and any amended complaints filed prior to a responsive pleading. *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (§ 1915(e) applies to “all in forma pauperis complaints”). For purposes of § 1915’s screening requirement, a properly pled complaint must therefore provide “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2); *see also Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The simplified pleading standard set forth in Rule 8(a) of the Federal Rules of Civil Procedure applies to all civil actions, with limited exceptions. *Alvarez v. Hill*, 518 F.3d 1152, 1159 (9th Cir. 2008). Although Rule 8 does not require detailed factual allegations, it demands “more than labels and conclusions” or a “formulaic recitation of the elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). A complaint “must contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively.” *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).

1 Federal courts are given the authority dismiss a case if the action is legally “frivolous or
 2 malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from
 3 a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). The standard for
 4 determining whether a plaintiff has failed to state a claim upon which relief can be granted under
 5 § 1915 is the same as the Federal Rule of Civil Procedure 12(b)(6) standard for failure to state a
 6 claim. *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). Review under Rule 12(b)(6) is
 7 essentially a ruling on a question of law. *N. Star Intern. v. Arizona Corp. Comm'n*, 720 F.2d
 8 578, 580 (9th Cir. 1983). In considering whether a plaintiff has stated a valid claim, the court
 9 accepts as true all material allegations in the complaint and construes them in the light most
 10 favorable to the plaintiff. *Russell v. Landrieu*, 621 F.2d 1037, 1039 (9th Cir. 1980).

11 Plaintiff’s Complaint challenges a decision by the Social Security Administration
 12 (“SSA”) denying Plaintiff benefits under Titles II and XVI of the Social Security Act. *See also*
 13 Am. Compl. ¶ 3. To state a valid benefits claim, a complaint must give the defendant fair notice
 14 of what the plaintiff’s claim is and the grounds upon which it rests. *See Starr*, 652 F.3d at 1216.
 15 To do so, the complaint should state when and how he exhausted his administrative remedies
 16 with the SSA and the nature of Plaintiff’s disability, including when Plaintiff claims he became
 17 disabled. The complaint should also contain a short and concise statement identifying the nature
 18 of Plaintiff’s disagreement with the SSA’s determination and show that Plaintiff is entitled to
 19 relief. Although this showing need not be made in great detail, it must be presented in sufficient
 20 detail for the court to understand the disputed issues so that it can meaningfully screen the
 21 complaint. *See* 4 Soc. Sec. Law & Prac. § 56:4 (2015).

22 **A. Exhaustion of Administrative Remedies**

23 Before Plaintiff can sue the SSA in federal court, Plaintiff must exhaust administrative
 24 remedies. 42 U.S.C. § 405(g). *See Bass v. Social Sec. Admin.*, 872 F.2d 832, 833 (9th Cir. 1989)
 25 (“Section 405(g) provides that a civil action may be brought only after (1) the claimant has been
 26 party to a hearing held by the Secretary, and (2) the Secretary has made a final decision on the
 27 claim”). Generally, if the SSA denies a claimant’s application for disability benefits, he can
 28 request reconsideration of the decision. If the claim is denied upon reconsideration, a claimant

1 may request a hearing before an Administrative Law Judge (“ALJ”). If the ALJ denies the
 2 claim, a claimant may request review of the decision by the Appeals Council. If the Appeals
 3 Council declines to review the ALJ’s decision, a claimant may then request review by the United
 4 States District Court. *See* 20 C.F.R. §§ 404, 416. In this case, Plaintiff alleges that on January
 5 15, 2015, the Appeals Council denied Plaintiff’s request for review, and the ALJ’s decision
 6 became the final decision of the Commissioner. *See* Am. Compl. ¶ 8. Thus, it appears Plaintiff
 7 has his exhausted administrative remedies.

8 Once Plaintiff has exhausted his administrative remedies, Plaintiff can obtain review of
 9 an SSA decision denying benefits by commencing a civil action within 60 days after notice of a
 10 final decision. *See* 20 C.F.R. §§ 404, 416. An action for judicial review of a determination by
 11 the SSA must be brought in a District Court of the United States for the judicial district in which
 12 the Plaintiff resides. *Id.* Here, the Application to Proceed *In Forma Pauperis* (Dkt. #1), filed
 13 March 4, 2015, demonstrates that Plaintiff timely commenced this action and the Amended
 14 Complaint (Dkt. #5) shows that he resides within the District of Nevada. *See* Am. Compl. ¶ 1.

15 **B. The Nature of Plaintiff’s Disability and Grounds for Plaintiff’s Appeal**

16 Plaintiff’s Complaint seeks judicial review of the Commissioner’s decision denying
 17 benefits and asks the Court reverse that decision, or alternatively, remand this matter for a new
 18 hearing. A district court can affirm, modify, reverse, or remand a decision if Plaintiff has
 19 exhausted his administrative remedies and timely filed a civil action. However, judicial review
 20 of the Commissioner’s decision to deny benefits is limited to determining: (a) whether there is
 21 substantial evidence in the record as a whole to support the findings of the Commissioner; and
 22 (b) whether the correct legal standards were applied. *Morgan v. Comm’r of Social Sec. Admin.*,
 23 169 F.3d 595, 599 (9th Cir. 1999).

24 In his Amended Complaint, Plaintiff claims that the ALJ found him to “have the severe
 25 impairments of back disorder and compression history of Paget’s disease; diabetes mellitus;
 26 hypertension; gout; history of left carpal tunnel release with no residuals; and obesity.” *See* Am.
 27 Compl. (Dkt. #5) at ¶ 9(d). Plaintiff contends there is not substantial medical or vocational
 28 evidence in the record to support: (a) the legal conclusion he is not disabled within the meaning

1 of the Social Security Act; or (b) the Commissioner's finding that Plaintiff could perform
2 substantial gainful activity. *Id.* ¶ 9. Plaintiff asserts that the record supports a finding that
3 Plaintiff is disabled and has been continuously disabled at all relevant times. *Id.* ¶ 9(c). Finally,
4 Plaintiff alleges new evidence exists that warrants a remand of this matter for further
5 proceedings. *Id.* ¶ 9(h). Plaintiff's Amended Complaint has sufficiently pled facts to describe
6 plaintiff's disability and grounds for challenging the ALJ's decision, and therefore states a valid
7 claim for relief.

8 Accordingly,

9 **IT IS ORDERED** that:

10 1. The Clerk of Court shall issue summons to the United States Attorney for the District
11 of Nevada and deliver the summons and Amended Complaint to the U.S. Marshal for
12 service.

13 2. The Clerk of the Court shall serve the Commissioner of the Social Security
14 Administration by sending a copy of the summons and Complaint by certified mail
15 to: (1) Office of Regional Chief Counsel, Region IX, Social Security Administration,
16 160 Spear St., Suite 899, San Francisco, California 94105-1545; and (2) the Attorney
17 General of the United States, Department of Justice, 950 Pennsylvania Avenue, N.W.,
18 Room 4400, Washington, D.C. 20530.

19 3. From this point forward, Plaintiff shall serve upon Defendant or, if appearance has
20 been entered by counsel, upon the attorney, a copy of every pleading, motion or other
21 document submitted for consideration by the court. Plaintiff shall include with the
22 original paper submitted for filing a certificate stating the date that a true and correct
23 copy of the document was personally served or sent by mail to the defendants or
24 counsel for the defendants. The court may disregard any paper received by a district
25 judge or magistrate judge which has not been filed with the Clerk, and any paper
26 received by a district judge, magistrate judge or the Clerk which fails to include a
27 certificate of service.

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4. Following the filing of an answer, the Court will issue a scheduling order setting a briefing schedule.

Dated this 9th day of October, 2015.

Peggy A. Tees
PEGGY A. TEEN
UNITED STATES MAGISTRATE JUDGE